

CHAPTER 10
ADMINISTRATIVE RULES AND DECLARATORY ORDERS

[Prior to 6/3/87, Transportation Department[820]—(01,B) Ch1]

761—10.1(17A) General.

10.1(1) Rescinded, effective 1/7/87.

10.1(2) Definitions. The definitions in Iowa Code section 17A.2 and the definition of “small business” in Iowa Code section 17A.4A are hereby adopted. In addition:

“*Commission*” means the Iowa transportation commission.

“*Department*” means the Iowa department of transportation.

“*Director*” means the director of transportation or the director’s designee.

“*Written criticisms*” means:

1. Petitions for rule making, objections filed pursuant to Iowa Code subsection 17A.4(4), and written and oral submissions received during rule making pursuant to Iowa Code paragraph 17A.4(1) “b.”

2. Petitions for waiver of a rule tendered to the department or granted by the department under 761—Chapter 11.

3. Letters to the director criticizing or recommending changes to a rule.

10.1(3) Address. The address of the department’s administrative rules coordinator is: Administrative Rules Coordinator, Director’s Staff, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010.

761—10.2(17A) Rule making.

10.2(1) Notice of Intended Action—approval and content. Written authorization to publish proposed rules under Notice of Intended Action in the “Iowa Administrative Bulletin” shall be made by the director. The Notice of Intended Action shall contain:

a. Either the complete text of the proposed rules or a summary of the subjects and issues involved.

b. The methods that persons and agencies may use to present their views on the proposed rules. In addition to providing for the submission of written comments, the Notice shall afford any interested person or agency the opportunity to make an oral presentation.

c. Any other information required by statute or rule.

d. Each commissioner shall be sent a copy of the Notice of Intended Action before its publication in the Iowa Administrative Bulletin.

10.2(2) Notice of Intended Action—submission of written comments and written requests to make an oral presentation.

a. With regard to proposed rules published under Notice of Intended Action, the department shall accept and consider, from any person or agency, written comments and written requests to make an oral presentation when prepared and submitted in conformance with the following:

(1) Comments and requests shall clearly state the name, address and telephone number of the person or agency authoring the comment or request and the number and title of the proposed rule as given in the Notice of Intended Action.

(2) If an oral presentation is requested, the general content of the presentation shall be indicated.

(3) Comments and requests shall be submitted to the office specified in the Notice of Intended Action. To be considered, they must be received by the office no later than the date specified in the Notice. The date shall be no less than 20 days after publication of the Notice.

b. The receipt and acceptance for consideration of written comments and written requests shall be promptly acknowledged by the department.

(1) Written comments received after the deadline may be accepted by the department although their consideration is not assured.

(2) Written requests to make an oral presentation received after the deadline shall not be accepted.

c. In addition to the formal procedures contained in this rule, the department may solicit viewpoints or advice concerning proposed rules through informal conferences or consultations as the department may deem desirable.

10.2(3) Adoption and filing of rules.

a. The director shall adopt proposed rules unless statutes specifically provide for commission adoption. The commission shall approve rules prior to their adoption by the director except as provided in subrule 10.2(5).

b. Upon adoption of proposed rules by the director or the commission, the director shall file them in accordance with Iowa Code section 17A.5.

10.2(4) Regulatory analysis. A request for issuance of a regulatory analysis shall be submitted to the department's administrative rules coordinator at the address in subrule 10.1(3).

10.2(5) Nonsubstantive amendments to rules. In reliance upon Iowa Code subsection 17A.4(2), rule making concerning nonsubstantive amendments shall be exempted from Iowa Code subsection 17A.4(1) and subrules 10.2(1) and 10.2(2). Because nonsubstantive amendments do not alter the meaning or consequence of a rule, it is determined unnecessary and contrary to the public interest to expend resources in publishing a Notice of Intended Action and providing an opportunity for public comment during the rule-making process. Nonsubstantive amendments may be adopted and filed by the director. Nonsubstantive amendments shall include the following:

a. Correcting the name, address or telephone number of an organizational unit within the department.

b. Updating references to the Iowa Code or the Iowa Acts to reflect the most current citation.

c. Correcting spelling, typographical or grammatical errors.

d. Eliminating references to gender.

10.2(6) Concise statement. If requested in accordance with this subrule, the department shall issue a concise statement of the principal reasons for and against a rule that has been adopted, incorporating therein the reasons for overruling considerations urged against the rule.

a. The request shall:

(1) Clearly state the name, address and telephone number of the person or agency authoring the request and the number and title of the rule which is the subject of the request.

(2) Be submitted in writing to the department's administrative rules coordinator at the address in subrule 10.1(3).

* (3) Be delivered to the coordinator or postmarked no later than the thirtieth calendar day following adoption of the subject rule.

b. A requested concise statement shall be issued either at the time of rule adoption or within 35 days after the department's administrative rules coordinator receives the request.

10.2(7) Registration.

a. *Trade or occupational associations.* The state office of a trade or occupational association may register its name and address with the department to receive copies of Notices of Intended Action.

(1) The request must be in writing and indicate the subject matter and the number of copies of Notice of Intended Action it wishes to receive.

(2) The trade or occupational association shall reimburse the department for the actual costs incurred in providing copies to it.

*Effective date delayed until adjournment of the 1991 session of the General Assembly by the Administrative Rules Review Committee at its August 15, 1990, meeting.

b. *Small businesses.* A small business or an organization of small businesses may register its name and address with the department to receive notification of Notices of Intended Action and of rules adopted and filed without a Notice of Intended Action which may have an impact on small business.

(1) The request must be in writing and may indicate the subject matter of rules it is interested in. An organization requesting registration shall indicate how many small businesses it represents.

(2) At the discretion of the department, notification shall consist of either a copy of the rules or a summary of the subjects and issues involved.

c. *Submission and acknowledgment of requests.* Requests for registration under this subrule shall be submitted to the department’s administrative rules coordinator at the address in subrule 10.1(3). The receipt of requests for registration shall be promptly acknowledged by the department. The acknowledgment shall either:


- (1) Inform the requester that it is registered, or
- (2) State that the request is incomplete and indicate the additional information required.

761—10.3(17A) Petitions for rule making.

10.3(1) The department shall accept and consider, from any person or agency, petitions for rule making when submitted to the department’s administrative rules coordinator at the address in subrule 10.1(3) and prepared in conformance with the following:

a. Format:

IOWA DEPARTMENT OF TRANSPORTATION
800 Lincoln Way, Ames, Iowa 50010

PETITION BY (insert petitioner’s name) FOR THE (insert one-adoption, amendment or repeal) OF (insert current rule number, if applicable, and brief description of subject matter)		DOCKET NO. _____ PETITION FOR RULE MAKING
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(In separate numbered paragraphs, the petition shall include the following.)

- 1. The petitioner’s name, address and telephone number.
- 2. The nature of the petitioner’s interest in the matter.
- 3. The text or the essential terms and conditions of a proposed new rule, or the rule number and text of a rule proposed for amendment or a repeal. In addition, proposed amendments shall be illustrated to portray the changes in wording requested: Deletions are to be indicated by strike-throughs, and additions by underscoring.
- 4. The reasons for seeking the requested action, including any facts, views, data or arguments relevant to the request. Copies of statutes, rules or other supporting documents referenced in the petition shall be submitted as appendices to the petition or made available to the department upon request.
- *5. If desired, a request to meet informally with the department to discuss the petition.

(Signature of petitioner)

*Effective date delayed until adjournment of the 1991 session of the General Assembly by the Administrative Rules Review Committee at its August 15, 1990, meeting.

b. A petition for amendment or repeal of a rule shall pertain to a rule currently in effect at the time the petition is received by the department.

c. Petitions should be typewritten, although petitions legibly hand-printed in ink shall be accepted.

d. Rescinded IAB 6/8/94, effective 7/13/94.

10.3(2) The date of receipt of a petition is the day it reaches the department’s administrative rules coordinator. The coordinator shall promptly notify the petitioner of the date of receipt and the assigned docket number.

10.3(3) If requested in the petition, the department shall schedule an informal meeting with the petitioner to discuss the petition.


10.3(4) The department shall notify the petitioner of the director’s or commission’s determination to grant or deny the petition. If the petition is denied, the notification shall include the reasons for denial.

761—10.4(17A) Declaratory orders.

10.4(1) The department shall accept and consider, from any person or agency, petitions for the issuance of declaratory orders when submitted to the department’s administrative rules coordinator at the address in subrule 10.1(3) and prepared in conformance with the following:

a. Format:

IOWA DEPARTMENT OF TRANSPORTATION
800 Lincoln Way, Ames, Iowa 50010

PETITION BY (insert petitioner’s name) FOR THE ISSUANCE OF A DECLARATORY ORDER ON (insert number of statute, rule, etc. and brief description of subject matter)		DOCKET NO. _____ PETITION FOR DECLARATORY ORDER
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(In separate numbered paragraphs, the petition shall include the following.)

1. The petitioner’s name, address and telephone number.
2. The exact words, passages, sentences or paragraphs of statutes, rules, etc. which are the subject of the inquiry.
3. A clear, concise and complete statement of all relevant facts for which the order is requested.
4. The uncertainties or conflicting interpretations which arise when the cited statutes, rules, etc. are applied to the facts.
5. (Optional) The interpretation urged based upon the facts set forth.
6. The reasons for prompting the petition and a full disclosure of the petitioner’s interest.
7. Whether the petitioner is currently a party to a rule making, contested case or judicial proceeding involving the controversy or uncertainty.
8. The names and addresses, when known, of other persons who may be affected by the declaratory order.

(Signature of petitioner)

b. Petitions should be typewritten although petitions legibly hand-printed in ink shall be accepted.

c. Rescinded IAB 6/8/94, effective 7/13/94.

10.4(2) The date of receipt of a petition is the day it reaches the department's administrative rules coordinator. The coordinator shall promptly notify the petitioner of the date of receipt and the assigned docket number.

10.4(3) A declaratory order or a statement declining to issue a declaratory order shall be issued by the director.

10.4(4) The director shall not issue a declaratory order that would substantially prejudice the rights of a person who would be a necessary party and who does not consent in writing to the determination of the matter by a declaratory order proceeding.

10.4(5) The director may decline to issue a declaratory order for any of the following reasons:

a. The petition does not substantially comply with the required form.

b. The petition does not contain facts sufficient to demonstrate that the petitioner will be aggrieved or adversely affected by the failure of the agency to issue a declaratory order.

c. The agency does not have jurisdiction over the questions presented in the petition.

d. The questions presented in the petition are also presented in a current rule making, contested case, or other agency or judicial proceeding that may definitively resolve them.

e. The questions presented in the petition would more properly be resolved in a different type of proceeding or by another body with jurisdiction over the matter.

f. The questions posed or facts presented in the petition are unclear, vague, incomplete, overbroad, insufficient, or otherwise inappropriate as a basis upon which to issue a declaratory order.

g. There is no need to issue a declaratory order because the questions raised in the petition have been settled due to a change in circumstances.

h. The petition is not based upon facts calculated to aid in the planning of future conduct but is, instead, based solely upon prior conduct in an effort to establish the effect of that conduct or to challenge an agency decision already made.

i. The petition requests a declaratory order that would necessarily determine the legal rights, duties, or responsibilities of other persons who have not joined in the petition or filed a similar petition and whose position on the questions presented may fairly be presumed to be adverse to that of the petitioner.

j. The petitioner requests the agency to determine whether a statute is unconstitutional on its face.

These rules are intended to implement Iowa Code chapter 25B and sections 17A.1 to 17A.9, 17A.19, 307.10 and 307.12.

[Filed 5/22/75]

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